

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE:	)	
	)	
EASTERN LIVESTOCK CO., LLC,	)	Case No. 10-93904-BHL-11
	)	
Debtor.	)	
<hr/>		
JAMES A. KNAUER, CHAPTER 11 TRUSTEE	)	
OF EASTERN LIVESTOCK CO., LLC	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No. 12-59154
	)	
ERNEST ELDER a/k/a ERNIE ELDER d/b/a ECF	)	
FARMS,	)	
	)	
Defendant.	)	
	)	
	)	

**NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM**  
**TO ERNEST ELDER**

TO: Ernest Elder  
c/o W. Scott Newbern  
W. SCOTT NEWBERN, P.L.  
2982 East Giverny  
Tallahassee, FL 32309  
[wsnewbern@gmail.com](mailto:wsnewbern@gmail.com)

Please take notice that, pursuant to Fed. R. Civ. P. 30, Fed. R. Bankr. P. 7030, and Fed. R. Civ. P. 45, James A. Knauer, as the trustee of the bankruptcy estate of Eastern Livestock Co., LLC, by counsel, will take the deposition of Ernest Elder, beginning at 10:30 AM (CST) on Thursday, December 17, 2015, at the Law Offices of Henry Fincher, 305 East Spring St., Cookeville, TN 38501 before a court reporter authorized to administer oaths and continuing until completed. The deponent and/or counsel shall produce each of the things listed on the attached

**Exhibit A** to the undersigned and/or make them available for inspection and copying on the day of the deposition. **Exhibit B** attached hereto and made a part hereof sets forth the text of Fed. R. Civ. P. 45(d) and (e). The deposition will be conducted in accordance with the July 3, 2012 *Order Establishing Deposition Protocols* (Main Case, ECF No. 1229). You are invited to appear and take part in such examination.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

/s/ Jay P. Kennedy  
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*Attorney for James A. Knauer Chapter 11 Trustee  
for the bankruptcy estate of Eastern Livestock Co.,  
LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2015, a copy of the foregoing was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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**EXHIBIT “A”**

Pursuant to the Notice of Deposition and Subpoena Duces Tecum to Ernest Elder, deponent and/or counsel are hereby commanded to produce and/or make available for copying and inspection the following documents and things to Jay P. Kennedy or Amanda D. Stafford, Kroger, Gardis & Regas, LLP, 111 Monument Circle, Suite 900, Indianapolis, IN 46204, counsel for the Trustee, on December 17, 2015 at 10:30 AM (CST):

1. Any and all documents relating to the Transfers, including the documents supporting the underlying purchases and/or sales for each transfer.
2. Any and all checks or other documents evidencing payments by ELC or Gibson to you during the two years preceding the Petition Date.
3. Any and all checks or other documents evidencing payments by you to ELC or Gibson during the two years preceding the Petition Date.
4. Any and all documents relating to the Notes.
5. Any and all documents relating to background services you provided to or for ELC during 2009 and 2010.

**Definitions and Instructions**

The following definitions and instructions apply to each of the requests set forth above:

1. “Document” or “documents” mean each and every writing or record of every type and description, however produced or reproduced, whether draft or final, original or reproduction, paper or electronic, signed or unsigned, that is in your possession or custody or under your control or to which you otherwise have access, regardless of where located, and includes, but is not limited to, any correspondence, email, letter, meeting minutes (including but



not limited to corporate board minutes), any ledger sheet, contract, negotiable instrument (including but not limited to any check), agreement, memorandum, report, note, diary, calendar, telegram, summary, ledger, invoice, bill, bill of lading, receipt, check, checkbook, chart, graph, drawing, blueprint, diagram, worksheet, study, survey, market survey, bulletin, article, notice, instruction, book, manual, pamphlet, periodical, journal, log, indice, photograph (negative and print), microfiche, microfilm, telephone record, tax return, tape recording, video recording, movie, compact disk, computer disk and drive, other data compilation from which information can be obtained, any materials similar to any of the foregoing, however denominated and by whomever prepared and to whomever addressed, and all other documents and things subject to production under Rule 34 of the Federal Rules of Civil Procedure. All copies and versions of any document which contains any notation, erasure, obliteration, marking or writing of any kind different from the original shall be treated as an original document.

2. “ELC” or “Eastern” means and refers to Eastern Livestock Co., LLC, and includes its affiliates, members, officers, employees, attorneys, agents, accountants, and representatives of any kind.

3. “Gibson” means and refers to Thomas P. Gibson and includes all persons under his control and/or operating as his agent or representative.

4. “Notes” means and refers to the promissory notes attached as Exhibits “D” and “E” to the Amended Complaint filed in this adversary proceeding on February 6, 2013.

5. “Petition Date” means and refers to December 6, 2010, the date of the filing of an involuntary petition for relief against Eastern Livestock Co., LLC under Chapter 11 of Title 11 of the United States Code as case number 10-93904-BHL in the United States Bankruptcy Court for the Southern District of Indiana, New Albany Division.

6. “Transfers” shall mean the transactions that are the subject of the Amended Complaint filed in this adversary proceeding on February 6, 2013.

7. “You”, “your”, and “Elder” means and refers to Ernest Elder and includes all persons under your control and/or operating as your agent or representative.

8. The singular shall include the plural, and the plural shall include the singular; the words “and” and “or” shall be construed conjunctively or disjunctively to make the request inclusive rather than exclusive; “and” shall include “or” and “or” shall include “and;” “any” shall include “all” and “all” shall include “any.”

9. If you claim privilege or immunity from discovery for any of the materials described above, you are commanded to provide a written log sufficiently describing each of those items and to produce the log on the day of the deposition.

## **EXHIBIT B**

Subdivisions (d) and (e) of Rule 45 of the Federal Rules of Civil Procedure, made applicable in this case under Rule 9016 of the Federal Rules of Bankruptcy Procedure, provides:

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in [Rule 45\(c\)](#);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in [Rule 45\(d\)\(3\)\(B\)](#), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of [Rule 26\(b\)\(2\)\(C\)](#). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.